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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Letter dated 9 November 1999 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General

I have been instructed by my Government to present its comments on the report of 24 September 1999 (A/54/396-S/1999/1000), submitted by Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, specifically the part relative to the Federal Republic of Yugoslavia.

1. As in the past, the Special Rapporteur has demonstrated also in this report that reporting on the situation of human rights in the Federal Republic of Yugoslavia has become highly politicized and that he is unable to fulfil his mandate impartially and independently. This is evinced primarily by the methodology of the reporting, which is a function of the relativization and/or outright cover-up of the violation of the human rights of Serbs in Kosovo and Metohija, the autonomous province of the Yugoslav constituent Republic of Serbia, massive crimes against the population of the Federal Republic of Yugoslavia and the violation of all norms of international law during the aggression of the North Atlantic Treaty Organization (NATO), including the Charter of the United Nations and numerous international human rights conventions and, subsequently, of Security Council resolution 1244 (1999). The presentation in the report of the bombing of the headquarters of Radio Television Serbia, one among many grave crimes committed by NATO against the civilian population, is paradigmatic in that regard. The case is presented, in fact deliberately hidden, within chapter V, section D, 1 (c), *Freedom of expression* (para. 101), by a manipulative juxtaposition of alleged abuses of journalism and journalists in Serbia, criticism of "informative talks", control of the media by the army under martial law and other alleged restrictions on the freedom of expression in the Federal Republic of Yugoslavia, intended to becloud the NATO crime and exculpate the perpetrator.

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2. Describing the situation in Kosovo and Metohija, on occasions the Special Rapporteur uses the data dating back to 1998 and already considered in his report to last year's session of the General Assembly. This is aimed at shifting the responsibility for the situation of human rights in the Federal Republic of Yugoslavia onto the authorities of the Federal Republic of Yugoslavia and the Republic of Serbia and at justifying the NATO intervention on humanitarian grounds and those of the protection of human rights. This manipulation is calculated at exonerating NATO and its member States from the responsibility for the open, illegal, massive and genocidal aggression against the Federal Republic of Yugoslavia between March and June 1999. The contention, raised widely before, that the activities of Yugoslav and Serbian security forces were the main cause of the fear and exodus of the population from Kosovo and Metohija before the NATO intervention is repeated with the same goal in mind. It is inaccurate and tendentious and a function of acquitting NATO from the responsibility for all the acts it committed in wanton disregard for the principles of the contemporary international legal system. Accordingly, in chapter V, sections E, *Concluding observations*, and F, *Recommendations* (paras. 122 and 123), the report falls far short of focusing on gross violations of each and every United Nations convention or covenant on human rights, as well as the Charter of the United Nations, committed in the NATO aggression and on the countless crimes of the so-called Kosovo Liberation Army (KLA) after the deployment of KFOR and UNMIK in Kosovo and Metohija.

3. The methodology of the report is accountable for another obfuscation: in an effort to scale down their size and significance, the human rights abuses evident in the use of cluster bombs and depleted uranium, the ethnic cleansing of Serbs after the aggression and the destruction of civilian infrastructure are immediately referenced to alleged violations of human rights by the Yugoslav side.

4. Alleging that the source of all problems are systemic failures to respect or protect human rights throughout the Federal Republic of Yugoslavia, while tiptoeing around massive NATO human rights violations in Kosovo and Metohija and keeping silent about the same NATO violations in the rest of the Federal Republic of Yugoslavia is morally suspect. Furthermore, the contention that NATO failed to prevent humanitarian catastrophe and the Yugoslav and Serbian forces from conducting a systemic campaign of terror is a *non sequitur* as the catastrophe and the campaign did not exist in the first place.

5. Chapter V, section D, 1 (d), *Effects of air strikes* (para. 102), does mention NATO "intensive" air strikes, but fails to relate them to the actual violations of the generally accepted norms in the field of human rights and humanitarian law. This is no surprise as a different approach would have entailed a condemnation of the violations and, presumably, a call to account to the perpetrators.

6. The contention in chapter V, section D, 1 (f), *Kosovo* (para. 107), that there has been a coordination of actions between the competent Yugoslav and Serbian authorities (Army of Yugoslavia and the police) and paramilitaries is untrue.

7. Chapter V, section D, 1 (g), *Refugees* (para. 109), addresses the very difficult refugee situation in the Federal Republic of Yugoslavia. However, it distorts some of its parameters by blaming the war for slowing or completely stopping the process of refugee returns to Croatia. It is the manipulative policy of the Croatian authorities that prevents the Serbian refugees from returning home in substantial numbers and that policy should be condemned.

8. Chapter V, section D, 2, *After the war* (paras. 111-121), does register, in paragraph 112, "the failure of the international community to place the territory [Kosovo and Metohija] under control, secure the peace, and provide the basic services and protections of governance". However, the subsequent contention that "Many violations of human rights

now being perpetrated by non-State actors are not dissimilar to those which preceded NATO intervention" is a false parallel invoked to mitigate the failure. The Special Rapporteur also fails to identify the perpetrators of these violations.

9. The Special Rapporteur has been commendably frank in reporting the "continued existence of detention centres maintained and controlled by the KLA and Kosovo Albanian paramilitaries" and the fact that KFOR located several such centres within Kosovo and Metohija, at least two of which — in Prizren and Gnjilane — contained instruments of torture. The Special Rapporteur has also noted that KFOR has not aggressively prosecuted KLA commanders in regions where it has located detention centres and that it has failed to locate and arrest KLA "police" and "military police" associated with detentions and abductions and that, according to reliable reports, KFOR officers have relied and continue to rely on information provided by KLA on persons whom KFOR should itself arrest. The Special Rapporteur has also presented the case of a KFOR official in Pec who told him, following a request by family members for an enquiry into the whereabouts of a Montenegrin police officer reported as abducted during the war in the Italian sector, that "there are no police who are not guilty of crimes". Considering these gross violations of human rights and the blatant failure to prevent them by those who are expected to do so, it is regrettable that the Special Rapporteur has not been more specific in rendering proper recommendations. Such abuses may indeed subvert "the rule of law and the fundamental principle of presumption of innocence and erode the authority of KFOR and civilian police", but they will not end if they are not stigmatized and addressed.

10. Concluding observations and recommendations have been simplified and do not correspond with the gravity of the situation in the reporting period, which relates to the most flagrant violations of the human rights of the population of the Federal Republic of Yugoslavia during and after the NATO aggression. The report makes no serious mention of the past and present responsibility of the terrorist so-called KLA for the atrocities committed against the Serbs and Montenegrins and other non-Albanians in Kosovo and Metohija. As if it were an institution of authority and not a terrorist organization and a group of criminals, the KLA is requested to provide data and information on detainees since March 1998. The report fails to reveal the true nature and intentions of this terrorist separatist organization and its collaboration with NATO and KFOR and has no word of condemnation of that collaboration.

11. Considering the enormous gravity of many problems that have not been given the attention they deserve, the report emphasizes unjustifiably the question of prisoners transferred from Kosovo and Metohija to central Serbia.

12. In its entirety, the report diverts attention from, or is completely silent about, the persecution and ethnic cleansing of over 330,000 Serbs, Montenegrins, Roma, Turks, Gorani, Muslims, Croats and other non-Albanians from Kosovo and Metohija, which continue unabated in the presence of KFOR and UNMIK.

I should be grateful if you would have the present letter published as a document of the fifty-fourth session of the General Assembly under agenda item 116 (c) entitled "Human rights questions: human rights situations and reports of Special Rapporteurs and Representatives".

(*Signed*) Vladislav **Jovanovic**
Chargé d'affaires a.i.